IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-463155-D2 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Leopoldo D. BLANCO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1586
Leopoldo D. BLANCO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 October 1965, an Examiner of the United States Coast Guard at Long Beach, California, suspends Appellant's seaman's documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS JAVA MAIL under authority of the document above described, on or about 10 August 1965, Appellant did "at or about 0130 hours, wrongfully fail to perform your duties while the vessel was at Calcutta, India, having been relieved for sleeping on watch and being under the influence of liquor."

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence, to explain the facts of the case, an entry in the Official Log Book of JAVA MAIL.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright plus six months on twelve months' probation.

The entire decision was served on 18 April 1966. Appeal was timely filed on 1 May 1966.

FINDINGS OF FACT

On 10 August 1965, Appellant was serving as a fireman-watertender board the United States SS JAVA MAIL and acting under authority of his document while the ship was in the port of Calcutta, India.

At 0130 on that date Appellant was found to be asleep on watch

in the engineroom and to be intoxicated. He was relieved of the watch by the chief engineer.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant feels that he is not guilty and is the victim of a personality clash with the engineer of the watch.

APPEARANCE: Appellant, per se

OPINION

I

Appellant's statement on appeal could be taken as indicating a desire to change his plea since he "feels" that he is not guilty. At the hearing the Examiner explained to him the effect of his plea and asked him whether he wished to change it. Appellant adhered to the plea in the knowledge that it admitted that he was asleep on watch and intoxicated on watch.

Whether or not appeal is an appropriate method to urge improvidence of a guilty plea I need not decide. Nothing that is stated on appeal gives reason even to consider improvidence in this case. Appellant has only urged that he had a personality clash with his superior officer of the watch. This alone, even if urged at hearing, would not constitute exculpatory evidence. Furthermore, the record shows that it was the chief engineer, not the watch engineer, who found it necessary to relieve Appellant of his duties.

II

While the Opinion thus far is sufficient to permit disposition of this case, I must comment upon one matter which gives cause for concern. I find that all too frequently I am being faced, in appealed cases, with specification inartfully drawn. This one here is an example.

I perceive a difference both in the nature and the gravamen of the offenses between "failure to perform duties because of intoxication" and two different offenses, "sleeping on watch" and "intoxication on watch."

The specification here could be construed as pleading an offense of failure to perform duties with three evidentiary facts pleaded, the need for relief from duty, sleeping, and intoxication. The fact of relief is, of course, not an offense, but is purely evidentiary and should not be pleaded.

The offenses of "sleeping on watch" and "intoxication on watch" may be under certain circumstances different offenses, and, under others, one aggravated offense. But either one is more serious than a mere failure to perform duties.

The defects in the specification here are not fatal error for administrative proceedings, but defects should be avoided and every effort should be made to be as correct as possible in framing specifications so as to anticipate contingencies of proof. Too often, after an inartful specification has been affected by an Examiner's opinion, it is difficult to ascertain just what was found proved.

III

There is another factor in this case that I am constrained to mention. The Examiner in this instance, I have noted in the past. has adopted the laudable practice of delivering his findings and making his orders on the record. This practice eliminates the difficulties created when decision is "reserved" with the result that months, or sometimes years, go by before a decision can be served on the party.

I was therefore surprised, upon first taking up this record, to see that Appellant had been present at the hearing but had not been served with the decision until seven months later. The complete record shows the reason.

The Examiner did make his findings on the record. Because of the short time elapsed, Appellant's prior record was not available. Appellant stated that he had no record. When invited to state this under oath, he declined to do so. The Examiner refrained from entering an order until he had the facts available. He advised Appellant that an outright suspension would probably be in order and that suspension time would be saved if Appellant deposited his document immediately. Appellant declined to do so, declaring that he needed the document for many purposes.

As the event proved, Appellant not only had a prior record but was actually on probation at the time. It seems obvious that his wary refusal to put his denial of prior record under oath was a delaying tactic. It seems also that his appeal in this case, utterly without substance, may be another such delaying tactic.

In the past I have been extremely liberal in accepting appeals from parties who raise only delaying and vexatious questions. While no undue harshness will ever be attempted in any case, prospective appellants may be forewarned that steps may be taken to prevent deceit by invocation of further action under R.S. 4450 or under 18 U.S.C. 1001, as appropriate.

Finally, I cannot but comment favorably upon the Examiner's action in this case, not only to invoke the probationary suspension but to add to it.

It has seemed to me that probation is something to be extended on good cause shown. The table at 46 CFR 137.20-165 merely indicates that in certain circumstances some offenses may in and of themselves be presumed to give good cause for probation. This does not mean that other factors may not call for outright suspension in those cases.

Too often an examiner merely invokes and make outright the suspension ordered by the earlier

examiner, and places any suspension ordered by himself entirely on probation even when there is no showing that probation is appropriate at all.

The practice adopted by the Examiner in this case is approved since the very violation of probation awarded in the earlier case tends to negative the existence of mitigating factors which could give cause for permitting probation, and the failure of any showing of good cause on the new case is adequate reason to order a suspension for a longer period than that originally called for.

CONCLUSION

The charges were proved by plea, and no reason appears to disturb the findings or order.

ORDER

The order of the Examiner dated at Long Beach, California, on 15 October 1965, as AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 15th day of September, 1966.

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